In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 603

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM H. DUVARNEY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General on behalf of the United States prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Circuit entered in the above entitled case on December 12, 1950.

OPINIONS BELOW

The opinion of the District Court for the District of New Hampshire (R. 9) is not reported. The opinion of the Court of Appeals for the First Circuit (R. 17) is reported at 185 F. 2d 612.

JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on December 12, 1950 (R. 20). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether Section 1 (a) of the Housing and Rent Act of 1947, approved June 30, 1947, in repealing the Veterans Emergency Housing Act of 1946, made unenforceable maximum sales prices, imposed under the latter Act prior to its repeal, on houses for which sales agreements were executed prior to June 30, 1947, but title to which did not pass until July and August, 1947.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are those involved in the companion case, *United States* v. *Fortier,* No. 602, and are set forth in the Appendix to the petition in that case.[1]

STATEMENT

In 1946, respondent applied to the Federal Housing Administration for construction authorization and priorities assistance, under Priorities Regulation No. 33 of the Civilian Production Administration, for the building of seven dwelling units at Derry, New Hampshire (R. 7). On June 3, 1946, the Federal Housing Administration approved the application, thereby authorizing construction, and set a maximum sales price of $6,000 per unit (R. 7). The project was assigned an HH priorities rating to enable the builders

[1] Priorities Regulation No. 33 is there set forth as amended on June 14, 1946 (11 F. R. 6598). The regulation as it read at the time the application in the instant case was approved was identical (11 F. R. 4085).

to obtain certain building materials specified in Schedule A to Priorities Regulation No. 33 (R. 7).

Respondent built only two of the houses authorized (R. 7). It does not appear from the record whether in building them respondent did or did not use the HH priorities. In the case of both houses, major extras were included and substantial modifications made which were known at the time to the local Federal Housing Administration officials (R. 9). Respondent did not, however, request or obtain authorizations to increase the maximum sales prices of the houses.

On June 25, 1947, respondent executed sales agreements on both houses, one to be sold at $10,500 and the other at $9,600 (R. 7). At that time down payments of $100 or $200 were made by the purchasers (R. 8). On July 25, 1947, and August 20, 1947, deeds were delivered to the purchasers and the remainder of the agreed purchase prices paid (R. 8).

The United States brought suit, pursuant to Sections 7 (a) and (c) of the Veterans Emergency Housing Act, to compel respondent to make restitution of the overcharges to the purchasers. The case was submitted on an agreed statement of facts. The district court gave judgment for respondent on the authority of its decision in the companion case, *United States* v. *Fortier*. On appeal, the Court of Appeals for the First

Circuit affirmed, on the authority of its decision in the *Fortier* case the same day.

REASONS FOR GRANTING THE WRIT

The reasons for granting the writ set forth in the petition for a writ of certiorari in No. 602, *United States* v. *Fortier,* are equally applicable to this case. We believe, however, that, even if the decision of the court below in *United States* v. *Fortier* be thought correct, its decision in the instant case is erroneous.

The only substantial difference between the cases is that, here, sales agreements on the houses involved were executed, and down payments made by the purchasers, before June 30, 1947, the effective date of the Housing and Rent Act of 1947, and of the repeal of the Veterans Emergency Housing Act of 1946. We submit, contrary to the holding of the court below, that that difference is significant. When respondent executed the sale agreements and accepted the down payments, his "liability" not to overcharge the purchasers was definitively established. The purchasers could have forced respondent to sell the houses and then sued him to recover the overcharges. We believe that respondent was, therefore, under a "liability" within the meaning of 1 U. S. C. § 109, which but for the repeal of the Veterans Emergency Housing Act would have been legally enforceable against him. We submit, for the reasons stated in our *Fortier* petition

which are incorporated herein, that Congress in the Housing and Rent Act of 1947 preserved that liability.

CONCLUSION

For the reasons set forth in the petition for certiorari in No. 602, *United States* v. *Fortier,* and the additional reasons stated above, it is respectfully submitted that this petition should be granted.

PHILIP B. PERLMAN,
Solicitor General.

MARCH, 1951.

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